

LABOUR DEPARTMENT

The 22nd October, 1968

No. 9834-3Lab- 68/26431.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Chandigarh, in respect of the dispute between the workmen and management of M/s Rohtak Central Co-operative Consumers Store Ltd., Rohtak :—

BEFORE SHRI K. L. GOSAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, CHANDIGARH

Reference No. 40 of 1968 made by the Haryana Government under their Notification No. ID/RK/15-A-68/20442, dated 2nd August, 1968

between

The workmen and the management of M/s Rohtak Central Co-operative Consumers Store Ltd., Rohtak

Present.—

Shri Narsang Sarup, for the management.

Shri Jhanji Ram and Mulkh Raj, workmen, concerned.

AWARD

The present reference which has been made to this Tribunal under clause (d) of sub-section 1 of section 10, read with section 2-A of the Industrial Disputes Act, 1947, relates to the dispute between the Rohtak Central Co-operative Consumers Store Ltd., Rohtak, on the one hand and two employees of the said store, namely, Jhanji Ram and Mulkh Raj on the other hand. Shri Jhanji Ram was admittedly appointed in the aforesaid concern in March, 1954, and his services were terminated with effect from 21st March, 1968. Shri Mulkh Raj was appointed in the aforesaid concern on 6th June, 1965 and was retrenched along with some other workmen on 30th of November, 1967. Both the aforesaid employees presumably applied to the Government for a reference being made to this tribunal with regard to the industrial dispute arising out of the termination of services of Jhanji Ram and retrenchment of Mulkh Raj. Since the dispute fell within the ambit of section 2-A of the Industrial Disputes Act, 1947, the Government have made the reference claimed by the employees.

On receipt of the reference in this tribunal usual notices were issued to the parties and in response to the same both the aforesaid workmen filed their statements of claims and the management filed their written statements in respect of the same. The pleadings of the parties gave rise to the following four issues which were framed on 4th September, 1968:—

- (1) Whether section 55 (I) (C) of the Punjab Co-operative Societies Act, 1961, is a bar to the adjudication of the present dispute by this Tribunal?
- (2) Whether the workmen could not have raised the dispute because of the fact that the same has not been espoused by a union of which the workmen in question were the members?
- (3) Whether the termination of services of Shri Jhanji Ram was justified and in order? If not; to what relief is he entitled?
- (4) Whether the retrenchment of Shri Mulkh Raj was justified and in order? If not; to what relief is he entitled?

Parties have led their evidence in respect of the said issues and their representatives have also addressed their arguments to me. My findings with respect to the said issues are as follows :—

Issue No. 1.—It is contended by the management that the only forum which can decide the dispute between an employee of a co-operative society and the society is the Registrar and that the Industrial Tribunal has no jurisdiction to adjudicate the dispute. Reliance for this proposition is placed by the management on section 55 of the Punjab Co-operative Societies Act, 1961. The operative part of the said Section reads as under:—

“55. *Dispute which may be referred to arbitration.*—(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of Co-operative Society arises—

- (a)
- (b)
- (c)
- (d)

Obviously the present dispute does not fall within the ambit of this Section in as much as it does not touch the constitution, management or the business of the Co-operative Society. This is a dispute pure and simple between the employer and the employee and since it happens to be an industrial dispute which is to be adjudicated under the provisions of the Industrial Disputes Act, the jurisdiction of the Industrial Tribunal for adjudicating the said dispute is not at all affected by the provisions of Section 55 of the Punjab Co-operative Societies Act, 1961.

For the reasons given above the issue is decided against the management.

Issue No. 2.—It is contended by the management that the dispute of both the workmen in this case is an individual dispute of theirs and since the same has not been espoused by a fairly large number of the workmen of the concern it does not fall within the definition of 'Industrial Dispute' as given in Section 2-k of the Industrial Disputes Act, 1947. This objection is totally misconceived and must be repelled. It is true that a long line of decisions had established that an individual dispute could not *per se* be an industrial dispute, but might become one if it was taken up by a trade union or a substantial number of workmen. Obviously this position of law created some hardship for individual workmen who were discharged, dismissed or retrenched or whose services were otherwise terminated when they could not find support from a union or from an appreciable number of workmen of the concern. The legislature has now removed this difficulty of theirs and has added Section 2-A to the Industrial Disputes Act, 1947, which is in the following terms :—

"2-A. *Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.*—Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or differences between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of the workmen is a party to the dispute".

Under this law the Government have now power to refer even an individual case as the same is now deemed to be an industrial dispute. This issue is, therefore, decided against the management.

Issue No. 3.—The only evidence that the management has produced in respect of this issue consists of one witness, namely R.W. 1 Shri Bhim Chand, Store-keeper of the concern. All that he has stated is that Shri Jhanji Ram works with him in the concern and has often been found absent from duty. It is not denied that Jhanji Ram was never chargesheeted for negligence of duty or absence from duty. It is also not denied that no domestic enquiry of any type was held against him and that he was not given any type of opportunity to show cause against his dismissal. The management seems to have terminated his services in a manner which is entirely contrary to the rules of natural justice. It appears to me that the management in this case has shown total lack of knowledge of the labour legislation and have not at all cared for the manner in which an industrial employee can be dismissed or discharged. Jhanji Ram has appeared as his own witness and has denied the allegations made against him by R.W. 1. I have no reason to prefer the evidence of R.W. 1. to that of Jhanji Ram. No reliance can be placed on the evidence of R.W. 1 in absence of any documentary evidence supporting his version. The management have totally failed to prove that they were justified in terminating the services of Jhanji Ram. For the reasons given above the issue is decided against the management.

Issue No. 4.—In proof of this issue the management has examined only one witness R.W. 2 Shri Kapoor Singh, Accountant of the Jind District Wholesale Cooperative Society Ltd., Jind. He has merely stated that Mulkh Raj is working as a peon in his society since 28th December, 1967 and that he used to draw his salary previously at the rate of Rs 90 and is now drawing his salary at the rate of Rs 100 per month. No evidence has been led to show in what circumstances and for what reasons Mulkh Raj was retrenched. There is nothing on record to show that Mulkh Raj was the junior most employee and that the rule of "last come first go" was even adverted to by the management while making the retrenchment of Mulkh Raj. The management had not proved that in retrenching Mulkh Raj they observed or even adverted to the provisions of section 25-F of the Industrial Disputes Act, 1947, or that they gave him notice required by clause (a) of that Section or paid him any compensation as required by clause (b) of that Section. The issue is in these circumstances decided against the management.

The management is directed to reinstate Shri Jhanji Ram and Shri Mulkh Raj with continuity of service and without any break in the same. The management is further directed to pay full back wages to Jhanji Ram from the date his services were terminated to the date he is reinstated. In view, however, of the fact that Shri Mulkh Raj has been in service for sometime, I direct the management to pay Mulkh Raj back wages at half the rate from the date he was retrenched to the date he is reinstated. I have taken into consideration the fact that Mulkh Raj has been drawing Rs 90 per month for some time from some other concern and is now drawing Rs 100 per month in the said concern but I have not been able to ignore the fact that as a result of his wrongful retrenchment he had to get employment at Jind and had to run two houses one for himself at Jind and one for his family at Rohtak. Taking all the facts into consideration I have come to the conclusion that it is fair to award him half the wages for the period he has been illegally kept out of employment from the concern in question. The amount of back wages will be paid to Jhanji Ram and Mulkh Raj within two months from the date of the publication of this award in the official gazette.

K. L. GOSAIN,

Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.

Dated 18th October, 1968

No. 1164, dated, Chandigarh, the 18th of October, 1968.

The award (four copies) be submitted to the Secretary to Government, Haryana, Labour and Employment Department, Haryana, Chandigarh, as required by Section 15 of the Industrial Disputes Act, 1947.

K. L. GOSAIN,

Presiding Officer,
Industrial Tribunal, Haryana,
Chandigarh.